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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION

Twelfth periodic reports of States parties due in 1995

Addendum

DENMARK*

[3 March 1995]

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* This report contains in a single document the tenth, eleventh and twelfth periodic reports of Denmark due on 8 January 1991, 1993 and 1995 respectively.

For the eighth and ninth periodic reports submitted by the Government of Denmark and the summary records of the Committee's meetings at which the reports were considered, see:

(8) CERD/C/158/Add.8 (CERD/C/SR.864 and SR.865);
(9) CERD/C/184/Add.2 (CERD/C/SR.864 and SR.865).

The annexes referred to in the text may be consulted in the files of the Centre for Human Rights.

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I. INTRODUCTION AND GENERAL COMMENTS

1. This report is submitted in pursuance of article 9, paragraph 1, of the International Convention on the Elimination of All Forms of Racial Discrimination which entered into force with respect to Denmark on 8 January 1972. It is organized in conformity with the general guidelines regarding the form and contents of reports to be submitted by States parties under article 9, paragraph 1, of the Convention (CERD/C/70/Rev.3), and concentrates on developments since the submission of the ninth periodic report in 1989 (CERD/C/184/Add.2). The general description of Danish society in the core document will be submitted shortly.

2. It should be noted that brief descriptions of

(a) The Danish policies to eliminate racial discrimination in all its forms;

(b) The general legal framework in which racial discrimination, as defined in article 1, paragraph 1, of the Convention, is prohibited and eliminated in Denmark; and

(c) The measures taken to promote and protect the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life have been given in the previous periodic reports, especially in the initial (CERD/C/R.50/Add.3) and the second periodic reports (CERD/C/R.77/Add.2) to which reference is made. The impact of the Convention on domestic law is dealt with in particular in section III of the fourth periodic report (CERD/C/48/Add.2).

3. Immigrants who have been resident in Denmark for a three-year period immediately preceding local elections have been granted the right to vote in such elections (cf. the comments on art. 5 in part II of the sixth periodic report (CERD/C/106/Add.9)).

4. The following annexes are submitted with the present report:

I. Judgement of the European Court of Human Rights of 23 September 1994 Jersild v. Denmark.

II. Act No. 466 of 30 June 1993 on the Board for Ethnic Equality.

III. Statistics concerning Greenland.

5. The following general conditions relating to the period since the submission of the last report should be mentioned.

6. Concerning the criminal case against a group of "green-jackets" mentioned in paragraph 11 of the ninth periodic report and referred to by the Committee in paragraph 56 in its consideration of the ninth report submitted by Denmark, the journalist who had been convicted and sentenced to a fine of DKr 1,000 by the Danish Supreme Court for contribution to public utterances of racially offensive statements, complained to the European Commission of Human Rights

in 1989. In its report of 8 July 1993, the European Commission found by 12 votes to 4 that Denmark had violated the journalist's right to freedom of expression. The European Court of Human Rights held in its judgement of 23 September 1994 by 12 votes to 7 that the journalist's right to freedom of expression in accordance with article 10 of the European Convention of Human Rights had been violated. A transcript of the judgement is annexed to this report and marked annex I.

7. In November 1994, the Government proposed a bill to amend section 266 (b) of the Danish Penal Code so that a prison sentence will become mandatory if the Court finds that the offence committed amounts to propaganda.

8. A Board for Ethnic Equality was set up by Act No. 466 of 30 June 1993. The tasks of the Board are among other things to make sure that discrimination between Danish citizens and persons of other ethnic origins is revealed and combated and that all ethnic groups in society have the possibility of carrying out their activities on equal terms. The composition of the Board is laid down in the Act on the Board of Ethnic Equality which is annexed to this report and marked annex II.

9. In 1994, the Government appointed a committee, the Committee on Employment Law, which has been assigned the task of examining and compiling legislation on employment policies with a view to creating a less complex legal position. The Committee is supposed to consider legislation in areas which are not directly statutory today, for instance whether legislation against ethnic discrimination should be introduced and how such legislation should be formulated, if deemed necessary. Furthermore, the Government has drawn up a plan of action for the breaking down of barriers for immigrants and refugees on the labour market. The plan mainly relates to courses at which immigrants and refugees are taught Danish and are informed about and introduced to working life in Denmark.

10. Additionally, a number of initiatives have been taken with the purpose of informing and changing the attitude of different target groups with a view to stopping discrimination. For instance, towards the end of 1994, the Ministry of the Interior launched a campaign particularly directed at the young.

II. INFORMATION RELATING TO ARTICLES 2 TO 7 OF THE CONVENTION

Article 2

11. Denmark has a total population of 5.2 million and as of January 1994, the number of immigrants and recognized refugees amounted to 189,000 or 3.6 per cent of the entire population. Of these some 133,000 persons came from so-called third countries (i.e. countries outside the Nordic region and the European Union). The largest groups of third country nationals were Turks (34,658), citizens of the former Yugoslavia (11,618), stateless persons (10,427), Iranians (7,939), Pakistanis (6,368) and Sri Lankans (5,782).

12. These numbers do not include asylum seekers and citizens of the former Yugoslavia who fall under a temporary protection scheme, currently some 19,000 persons. Until they are granted refugee status or other

semi-permanent warranty of residence, these groups have a special legal status and, consequently, they do not enjoy the same social rights as other aliens in Denmark. It should be stressed, however, that they do enjoy the general protection of Danish law, including provisions against racial discrimination. Furthermore, special legislation has been implemented in order to improve the social conditions of these persons.

13. The above numbers also do not reflect that a number of people of foreign origin have achieved Danish citizenship. It should also be mentioned that some 10,000 persons living in Denmark were born in Greenland, most of whom must be considered to be ethnic Greenlanders.

14. Regarding Turks, citizens of the former Yugoslavia and Pakistanis, as referred to above, these groups are primarily composed of immigrants who arrived in the 1960s and 1970s and persons who have entered Denmark later subject to the rules of family reunion. The fact that the relatively massive immigration commenced in the 1960s means that a second generation springing from these groups is growing up as part of Danish society. The Iranians and Sri Lankans are mostly refugees and family members who have arrived in Denmark in more recent years.

15. The different groups have settled all over Denmark and have thus become part of local community relations. Furthermore, immigrants and refugees are also the theme of a wide public debate. Both in local as well as in wider social contexts, immigrants and refugees are generally met with respect. However, in both contexts actions or utterances of intolerance and disrespect do occur to some extent. Outright racial discrimination is rare compared to the kind of intolerance which springs from a general and often irrational fear of social change and of strangers.

16. There are two strands to Danish policy to eliminate racial discrimination, which relies both on measures aimed directly at racial discrimination such as legislation and information and on more indirect measures to increase tolerance and further integration in its broadest sense. The latter includes comprehensive integration programmes for refugees in particular as well as more overall efforts to improve local community relations.

17. In Danish law, the basic assumption is that of equality between Danish citizens and citizens of other countries with permanent residence permits. Consequently, the right to work, the right to receive social benefits, the right to housing, etc. are the same for aliens and for Danes. One of the few exceptions is that only Danish citizens are entitled to vote in general elections whereas immigrants and refugees can vote in local elections, subject only to the requirement of three years' residence prior to the election (the same applies to Nordic citizens).

18. Beyond the basic assumption of equality, Danish law contains several provisions aimed directly at eliminating racial discrimination or similar types of discrimination or unequal treatment.

19. Firstly, section 266 (b) of the Danish Penal Code states that "Any person who publicly or with the intention of disseminating it to a wide circle of

people, makes a statement or imparts other information, threatening, insulting or degrading a group of persons on account of their race, colour, national or ethnic origin, belief or sexual orientation, shall be liable to a fine, simple detention or imprisonment for a term not exceeding two years".

20. Secondly, Act No. 626 of 29 September 1987 warrants penalties for discrimination in establishments and at arrangements open to the public.

21. Thirdly, Act No. 466 of 30 June 1993 on the Racial Equality Board establishes a mechanism to combat unequal treatment in all its aspects and to support equal opportunities for all ethnic groups in society (the Act is annexed to this report and marked annex II).

22. In addition to the above-mentioned legislation, Denmark has initiated several schemes to further integration and tolerance. The Danish Refugee Council runs an important integration programme for refugees, including courses on vocational and language skills, assistance in connection with social benefits, cultural events, etc. In 1993, a number of ministries also joined forces to improve urban problems characteristic of residential areas with large numbers of social clients, refugees and immigrants: a combination which has proved to be a breeding-ground of antagonism and intolerance. Through financial measures as well as social innovations such as activation programmes, the Danish Government will spend approximately DKr 1.6 billion over the next four years to turn this development around and improve community relations and the attitudes of residents. Other special measures to increase tolerance will be mentioned in relation to article 7 of the Convention.

23. Finally, it should be mentioned that new initiatives are expected to be taken in the course of the next few years not least due to the setting up of the Board for Ethnic Equality.

24. As stated in the second periodic report, section 70 of the Danish Constitution (Grundloven) provides that "no person shall be denied the right to full enjoyment of civil and political rights by reason of his creed or descent; nor shall he for such reasons evade any common civil duty". Furthermore, as mentioned in the third periodic report, part II, section 78 (2) of the Constitution provides that "associations employing violence or attempting to attain their aims by violence, by instigation to violence or by exerting similar punishable influence on dissentients shall be dissolved by judgement of a court of law". In the same section, subsection 3, regarding intervention against the association itself, the Act stipulates that "no association may in principle be dissolved by government measure. However, an association may be temporarily prohibited, provided that immediate proceedings are initiated for its dissolution". As regards the procedure in connection with the dissolution of associations please see below.

25. If the activities of an association are illegal, for instance in that the said association is pursuing the aim listed in section 266 (b) of the Danish Penal Code (see the paragraphs concerning article 4 below), the usual sanctions might be applied in order to intervene. If, as is the case in this example, it regards punishable offences, the parties involved might, according to the circumstances, be held liable subject to criminal law.

26. Regarding the distribution of taxable income for married couples and singles born in and outside Greenland respectively, please see the statistics annexed to this report and marked annex II1. It should be noted that changes to the collection of data have now made it possible to show more details than in previous reports.

27. The size and the composition of the population with regard to place of birth in or outside Greenland as well as number and distribution of public-sector employees in Greenland with regard to place of birth also appear from the statistics annexed to this report and marked annex III.

Article 3

28. Denmark has worked vigorously for more than 25 years in various forums and ways to dismantle apartheid and help the transition to democracy in South Africa. This goal was finally reached in a peaceful way with the election of a democratic government in April 1994. After the elections in April 1994, Denmark lifted all remaining sanctions against South Africa.

29. Denmark has initiated a programme of transitional assistance to South Africa of approximately US$ 115 million over a period of five years. The programme will focus on four main areas: democratization and violence prevention, land reforms and rural development, education, and black private sector and employment promotion.

Article 4

General Description

30. Subject to section 266 (b) of the Penal Code any person "who publicly or with the intention of disseminating it to a wide circle of people, makes a statement or imparts other information threatening, insulting or degrading a group of persons on account of their race, colour, national or ethnic origin, belief or sexual orientation" might be sentenced to a fine, simple detention or imprisonment for up to two years. The scope of application of this provision was widely extended in 1971 with a view to Denmark's ratification of the United Nations Convention on the full Elimination of All Forms of Racial Discrimination (see, in particular, the initial report, the second periodic report, the fourth periodic report, the seventh periodic report, the eighth periodi- report, and the ninth periodic report).

31. The terms "statement" and "other information" extend to written as well as oral means of expression, including pictures. The phrase "threatening, insulting or degrading" implies that the provision might also pertain to

expressions or, for instance, drawings that are degrading without being insulting. Criminal insult or degradation might, according to the circumstances, be expressed by contempt, ridicule, etc. without consideration for whether the statement is true or false.

32. Scientific theories on racial, national or ethnic differences do not, however, fall within the scope of the offences described in section 266 (b) of the Penal Code. Furthermore, statements which are not made in an actual scientific context but which otherwise form part of a serious debate will, according to the circumstances, be unpunishable. The same applies to statements of a less serious character. In the so-called "greenjacket case", the Court of Human Rights, in its judgement of 23 September 1994, held by 12 votes to 7 that a journalist's right to freedom of expression subject to article 10 had been violated by his conviction under the provision for having broadcast a feature in the Sunday News Magazine on TV in which some "greenjackets" made racist statements (see para. 8).

33. The punishable offences subject to section 266 (b) are furthermore restricted to statements or other information made "publicly or with the intention of disseminating". This phrase provides that statements made as part of a private conversation without the intention of wide dissemination will, according to the circumstances, also fall outside the scope of criminal law. Moreover, the information must be directed at "a group of persons on account of their race, colour, national or ethnic origin, belief or sexual orientation". The inclusion of sexual orientation was added to the provision by amendment in 1987 and was mainly directed at homosexuality. The restriction of the provision stipulating that the insult, etc. must relate to "a group of persons" means that statements directed at one individual person which cannot, at the same time, be considered an insult or threat to the group to which the person in question belongs are excluded from section 266 (b) of the Penal Code. Such statements will, however, according to the circumstances, be punishable subject to the regulations of the Penal Code relating to privacy and defamation.

34. Criminal liability subject to section 266 (b) is not limited to the person who makes the statement but also extends, according to the circumstances, to anyone "who by instigation, advice or action" is an accessory to the violation of section 266 (b) in pursuance of the usual regulations on assistance contained in section 23 of the Penal Code.

35. The penalty for violating section 266 (b) is as mentioned above: a fine, simple detention or imprisonment for up to two years. This penalty corresponds to the penalty for offences such as threats to life under section 266 of the Penal Code (cf. para. 36) and defamation under section 268 of the Penal Code. When the maximum penalty of section 266 (b) was fixed at up to two years' imprisonment, it was taken into account that in the most serious cases, for instance threats of grievous bodily harm, other provisions of the Penal Code warranting stricter penalties will always have been violated as well. Additionally, the fact that a violation of section 266 (b) has been committed by several perpetrators jointly could influence the sentence (note sect. 80 (2) of the Penal Code subject to which such joint action is in principle considered as an aggravating circumstance. Concerning sect. 80 (2), see the second periodic report).

36. As mentioned in, for instance, the second periodic report, page 5, other provisions of the Penal Code could extend to instigation to and/or commitment of violent acts against certain groups of persons or racial persecution. Consequently, one or several of the provisions in chapter 25 of the Penal Code on offences against life and body, for instance violence (cf. sects. 244-246 of the Penal Code), might be applied to warrant liability, perhaps together with section 23 of the Penal Code on assistance. Furthermore, with regard to, for instance, threats to life, section 266 of the Penal Code will extend to anyone "who in a way which might provoke in someone serious fear for his own or other persons' lives, health or well-being, threatens to commit a punishable act". The penalty for this offence corresponds to the penalties of section 266 (b) of the Penal Code: a fine, simple detention or imprisonment for up to two years.

37. Criminal liability subject to section 266 (a) on instigation to violence or vandalism might, according to the circumstances, also be applicable. Anyone "who publicly makes statements intended at provoking acts of violence or vandalism in cases where sections 136 and 266 do not extend to the offence in question" might thus be sentenced under this provision to simple detention or imprisonment for up to one year or, under mitigating circumstances, to a fine.

38. The provision referred to in section 136 of the Penal Code renders criminal certain kinds of instigation to criminal offences and, in addition to the ordinary regulations on assistance under section 23 of the Penal Code, it is of particular importance in cases where the conditions for imposing criminal liability for assistance are absent due to the fact that the offence instigated cannot be adequately specified.

39. Concerning individual criminal liability, see section 291 of the Penal Code on vandalism which is also referred to in the second periodic report. Committing vandalism based on, for instance, racist motives will thus, according to the circumstances, be covered by section 291 which provides a maximum penalty of up to four years' imprisonment.

40. Concerning the Act on the prohibition of discrimination on account of race, etc., see the comments below concerning article 5 for further information.

41. The Marketing Act (see Consolidated Act No. 594 of 27 June 1986) includes a number of provisions on the penalty for false or misleading marketing which might be applied in connection with racist marketing. The Act has previously been mentioned in the fourth periodic report, which includes parts of sections 1, 2 and 15 of the Act, and the seventh periodic report, mentioning the Consumer Ombudsman's report on the treatment of complaints about racist marketing. On the application of the Marketing Act in cases of racist marketing in the period from 1989 to 1993, see paragraph 47.

42. The Act on the Parliamentary Ombudsman (see Consolidated Act No. 642 of 17 September 1986) has been mentioned in a number of previous periodic reports. The Ombudsman supervises, among other things, the civil administration of the State and might in this connection, for instance, order the Prosecution to carry out a preliminary investigation or institute

proceedings before the ordinary courts for offences committed under public service or duties, including, for instance, violation of the prohibition of racial discrimination, and order the governmental authority in question to initiate a disciplinary case (see sect. 9 (1) and (2) of the Act on the Parliamentary Ombudsman). According to the same section, subsection 3, the Ombudsman might inform the person or authority in question of his opinion of the case. Regarding such cases brought before the Ombudsman in the period from 1989 to 1993, see paragraph 47.

43. As mentioned in paragraph 27, section 78 (2) of the Constitution provides that associations employing violence or attempting to attain their aims by violence, by instigation to violence or by exerting similar punishable influence on dissentients shall be dissolved by judgement of a court of law. Concerning the implication of this provision on article 4 (b) of the Convention on the Elimination of All Forms of Racial Discrimination, see the second periodic report, the third periodic report, the fourth periodic report, and the fifth periodic report.

44. Detailed regulations on the dissolution of such associations are laid down in the Danish Administration of Justice Act. Subject to section 684 (1) (2) of the Administration of Justice Act, cases in which the State advances a claim to have an association dissolved are subject to criminal law. Pursuant to section 701 (1) of the Administration of Justice Act, cases subject to section 78 of the Constitution concerning the dissolution of an association are to be brought before court in the circuit where the association or its board is domiciled or, in case of doubt, before a court in the circuit where one of the board members resides. Cases concerning the dissolution of political associations may also be brought before the Supreme Court (see sect. 78 (4) of the Constitution and sect. 966 (5) of the Administration of Justice Act).

45. Section 78 (5) of the Constitution provides that the legal effects of the dissolution shall be laid down in detail by law. Consequently, it has been decided in section 75 (5) of the Penal Code that in cases involving the dissolution of an association by judgement of a court of law, the funds, files, protocols and the like of the former association may be confiscated.

46. Furthermore, section 132 a (1) of the Penal Code stipulates that anyone "who participates in the continuation of the activities of an association after it has been prohibited temporarily by the Government or dissolved by judgement of a court of law" might be sentenced to simple detention or imprisonment for up to one year. Moreover, section 132 a (1 (2)) provides that anyone "who becomes a member of such an association after the prohibition or the dissolution" may be sentenced to a fine or simple detention.

Judicial measures

47. Neither the Parliamentary Ombudsman nor the Consumer Ombudsman has since the submission of the ninth periodic report on 16 August 1989 considered cases which might give rise to comments in the tenth, eleventh and twelfth periodic reports. The period from 1993 to 1995 will be dealt with in the next periodic report submitted by Denmark.

48. In the reporting period, the courts have passed convictions in three cases for violations of section 266 (b) of the Penal Code. One conviction was passed in 1992, two in 1993. The period from 1993 to 1995 will be dealt with in the next periodic report submitted by Denmark.

49. In the first case, a person was, among other things, convicted of having called two Turks perkersvin when they entered a kiosk (in Danish slang, perker is derogatory for Pakistanis and Turks and svin means pig).

50. In the second case, a person was convicted of violating section 266 (b) for having repeatedly posted bills with drawings and texts containing very negative statements and claims directed at Turks. The penalty was fixed at 10 days' simple detention but out of consideration for the defendant's age (73 years old) and due to the circumstances, the sentence was suspended.

51. The third case also concerned the production and posting of a number of bills with pictures as well as text containing insulting and degrading statements about certain groups. By way of explanation the defendants stated that they feared that there were too many foreigners in the country and that they wanted to provoke the population to awareness of the problem and to start a debate about the Danish refugee policy. The penalty was set at 20 daily fines of DKr 125 for each of the defendants.

52. In the reporting period, defendants in two cases were sentenced to a fine for violating section 1 (2) of the Racial Discrimination Act, the court stipulating that a penalty shall be imposed on anyone who, within a trade or business or a non-profit undertaking, on account of a person's race, colour, national or ethnic origin, refuses that person admission on the same terms as anybody else to a place, performance, exhibition, gathering or the like open to the public. One case is from 1989, the other from 1994.

53. The first case involved a restaurant owner who had refused two foreigners admission to play billiards in the restaurant on account of their ethnic origin. The defendant stated that on the day in question he had refused several persons of foreign as well as Danish origin admission and that many foreigners played billiards in his restaurant daily. The defendant admitted to having said to the two foreigners that he refused them admission on account of their ethnic origin, but he later excused himself by saying that he was tired. The defendant later expressed regret for his statement which he said did not reflect his general attitude. On this basis, the defendant accepted to pay a fine of DKr 600.

54. In the other case, a person working as a doorman at another restaurant was charged with having refused a person admission to the restaurant on account of the dark colour of his skin. The defendant stated that during the previous weekend, there had been a lot of pickpockets at the restaurant and the restaurant suspected the perpetrators of the thefts to be dark-skinned persons. For this reason, and to protect the other guests, the defendant had decided to refuse all dark-skinned persons admission to the restaurant. The following weekend, the defendant had again allowed everyone admission to the restaurant. On this basis, the defendant accepted to pay a fine of DKr 1,000.

55. In the reporting period, the courts have in one single case acquitted a person for violating section 266 (b) of the Penal Code. The case which dates back to 1993, concerns a person who, in a letter to a group of contractors, described the entry of refugees into Denmark as "a public danger" and compared the refugees to a "bunch of deceivers". On the reason for the acquittal, it is stated in the judgement that the statements could not be considered of serious enough nature to fall within the scope of section 266 (b) of the Penal Code.

56. In a judgement from 1994, the Eastern Division of the High Court convicted some persons charged with violating section 266 (b) of the Penal Code for the burning of a cross placed against a wooden fence in the garden of a Turkish family. It is stated in the judgment that it is based on the fact that the defendants had intentionally placed the burning cross in the road outside a house they knew was inhabited by Turks. Under such circumstances, the High Court found it indisputable that the act involved a threat, an insult or a degradation of the inhabitants of the house on account of their ethnic origin and that the defendants were aware of this, and of the fact that their statement would be disseminated to a wide circle; the Court consequently found them guilty.

57. In some instances the police or the Prosecution has dropped charges of violations of section 266 (b) of the Penal Code, the Racial Discrimination Act and the Marketing Act for various reasons. When investigations have either not been initiated or have been terminated at a later point, it might be due either to the fact that it has not been possible to find the perpetrator or that the existing evidence has in other regards proved to be inadequate, for instance subject to the provision of section 266 (b) of the Penal Code stipulating that the perpetrator must have had the intent to disseminate a racist statement to a wide circle of people. What is characteristic of such cases which, for instance, involve degrading statements about persons of foreign origin using expressions such as "dark pig" and "black pig", posting of racist bills, handing out of Nazi handbills, etc., is that besides the evidential aspects, questions regarding the application of section 266 (b) could also be raised.

58. Cases have also been closed by the Prosecution with reference to the fact that the objective substance of the offence has not been realized through the act in question. To illustrate this point, an incident from 1992 might be mentioned in which the Ministry of Justice agreed to a decision of the Director of Public Prosecution (Rigsadvokaten) according to which the qualifying demand as to the seriousness of the piece of information considered implicit in the phrase "threatening, insulting or degrading" of section 266 (b) of the Penal Code, as mentioned above, did not extend to some statements made in a book on Islam.

59. In the decision general reference is made both to the fact that section 266 (b) of the Penal Code is presumably to be interpreted narrowly out of regard to the freedom of expression and that the provision does not extend to all critical statements about, for instance, a certain religion or a person with a certain religious belief, not even if the critical statements might be undocumented or perhaps even completely untrue.

60. In the background to the decision of the case, it is furthermore underlined that the statements dealt with were part of the writer's usual argument that Denmark must show great reluctance in permitting aliens practising Islam to reside in the country. It is stipulated in this connection that it is not punishable in itself to express such an attitude or to argue in favour of it. Statements put forward as part of an argument to express an attitude of a general political nature must thus presumably be of a certain serious character before they are considered to be covered by section 266 (b) of the Penal Code.

61. Finally, a small number of cases were initiated after the submission of the ninth periodic report and are still pending with the police or the Public Prosecutor.

62. In the period covered by this report, the Eastern Division of the High Court has, in a judgement of 22 January 1991 published in the Weekly Law Journal 1991, page 358 (Ugeskrift for Retsvæsen) considered the question whether a local authority is entitled to take into account the nationality of tenants when accepting such tenants for social housing. The case was previously mentioned in the ninth periodic report of Denmark (para. 11), in which it was stated that the Parliamentary Ombudsman had refrained from considering the case since it had been dealt with by Parliament.

63. Subsequently, the person who had complained to the Parliamentary Ombudsman filed suit against the local authority of Ishøj. The background for the trial was that the person in question had been recommended for a vacant flat in a social housing complex of which he was a member. He was, however, not approved by the local authority in question as the local authority argued that the quota of aliens had been filled and that that specific part of the complex was overcrowded. Later, the person in question was recommended for a flat in another complex and in that case, the local authority of Ishøj again refused to accept the person since the local authority deemed that the complex in question could not hold more tenants of the same nationality.

64. The Eastern Division of the High Court in its judgement held that the way the local authority administered its power of acceptance had resulted in the fact that people of foreign nationality looking for housing had not in a number of cases been accepted as tenants only on account of their nationality.

65. The High Court found that the applicable Danish legislation, including Act No. 289 of 9 June 1971 on discrimination on account of race etc., did not warrant the procedure followed by the local authority. The High Court did not in this connection find that it made any difference that the higher goal of the outlined arrangement, according to the local authority, was to ensure among other things a reasonable integration of new foreign inhabitants.

66. The Court found in favour of the plaintiff in his principal claim subject to which the local authority was ordered to recognize that it was not entitled to refuse to accept a tenant because the person was a foreigner. The argument that the quota of foreigners was used up or that the specific part of the complex could not hold any more foreigners was rejected and the recommendation of the local authority to housing associations not to rent flats out to immigrants was held not to be in accordance with law.

Article 5

67. Simultaneously with the amendment of section 266 (b) of the Penal Code in 1971 (see para. 30), special legislation on the prohibition of discrimination on account of race etc. was implemented by Act No. 289 of 9 June 1971 which also aimed at making Danish ratification of the International Convention on the Elimination of All Forms of Racial Discrimination possible. The act was amended in 1987 to include "sexual orientation" corresponding to the parallel amendment of section 266 (b) of the Penal Code. The Act has previously been mentioned in the initial report, the second periodic report, the third periodic report, the fourth periodic report, the eighth periodic report, and the ninth periodic report.

68. Subject to section 1 (1) of the Act, anyone "who within a trade or business, or a non-profit undertaking, on the ground of a person's race, colour, national or ethnic origin or religion refuses to serve the person in question on the same conditions as others" shall be liable to a fine, simple detention or imprisonment for up to six months. The provision extends to serving or services of any kind offered to the public within trade or business or within a non-profit undertaking. Consequently, the provision extends to, for instance, services from sales, repair and service outlets of any kind, whatever their nature, of a shop, a workshop, a clinic or the like, access to medical and dental treatment as well as legal and architectural assistance, access to transportation of all kinds offered to the public, including private taxis, as well as access to service in restaurants, hotels, boarding houses, etc. Furthermore, the provision extends to professional sale and leasing, including sub-leasing, of property, flats or parts of these as well as leasing by housing associations.

69. The business does not have to be the main occupation of the owner and it is irrelevant whether it yields and/or aims at yielding a profit.

70. The provision extends to both the person carrying out and the person giving the order to commit the act of discrimination regardless of whether the person in question is responsible for the business or an employee.

71. An explicit refusal in response to a request for service as well as failure to serve without any explicit refusal both constitute refusal to serve.

72. The provision furthermore extends to increases of prices or other unfavourable conditions for persons of a certain race or the like (cf. the expression "on the same conditions as others").

73. The penalty for violation of this provision is usually milder than for offences subject to section 266 (b) of the Penal Code. The maximum penalty has therefore been fixed at only up to six months' imprisonment.

74. Subject to section 1 (2) of the Act, the same penalty as in section 1 (1) shall apply to anyone "who on any of the grounds mentioned in the foregoing subsection refuses to give a person admission, on the same conditions as others, to any place, performance, exhibition, gathering or the like open to the public". The provision extends to, for instance, public parks and the

like, any public exhibition, etc., that is theatres, cinemas, concerts, circus performances, presentations, etc., as well as any kind of sports arrangements, exhibitions and the like open to the public.

75. As regards the circumstances relating to section 266 (b) of the Penal Code, the penalty clauses of section 1 only extend to intentional violations (see sect. 2 of the Act). To ensure that the purpose of the Act is fulfilled, it has, however, been considered necessary to extend the fine liability to include collective units. In section 3 of the Act, it is therefore stipulated that when the offences mentioned in section 1 have been committed by a limited liability company, a cooperative society or the like, the company or society might be ordered to pay a fine.

Article 6

76. As regards guarantees ensuring efficient protection and efficient legal means against acts of racial discrimination, see the above concerning article 4.

77. On the right to seek just and reasonable compensation or redress through the courts for any damage suffered as a consequence of an act of racial discrimination, see the second periodic report, for the account of the provision of section 15 of the Act, applicable at that time, on the entering into force of a penal code.

78. The principles governing compensation with regard to financial as well as non-financial damage are unchanged. Regulations on compensation are now included in the Act on the liability to pay damages (see Consolidated Act No. 599 of 8 September 1986, with later amendments). According to section 1 (1) of the Act, any person liable for payment of personal damages must pay for lost earnings, health care expenses and other losses consequent to the damage as well as damages for pain and suffering.

Article 7

79. The equality of people is a guiding principle for the Danish public and in Danish education, media and private institutions. One example is the policies of Danish television stations which broadcast programmes on foreign cultures and on problems encountered by refugees and immigrants in Denmark. Another basic feature of Danish society is the generally fair and open way in which public institutions, including libraries and schools, deal with people regardless of their origin. The account below concentrates on particularly relevant public measures with regard to education, teaching, culture and information.

80. Extensive descriptions and updates of measures which give effect to the provisions of article 7 concerning education and teaching have been presented in Denmark's previous reports, to which reference is made. Furthermore, the Danish Government is currently examining the possibilities for a renewed effort to facilitate dealing with such issues as racial discrimination, intolerance and human rights in public school teaching. This being said, it should be reiterated that many teaching materials concerning these issues already exist and are being used at the discretion of teachers.

81. In 1994, the Ministry of the Interior administered a fund of DKr 8 million, the objective of which was to further understanding, tolerance and openness between Danes and people of foreign origin by supporting meetings and cultural events in local communities as well as through information campaigns. The Ministry of Cultural Affairs administers a fund, for which DKr 2 million were appropriated in 1994, to support local groups making a special effort to further the participation of refugees in sports. The Danish Government finds that the meeting of Danes and people of foreign origin in such everyday situations as sports activities is an excellent vehicle for promoting mutual respect and tolerance.

82. In addition to the above, it should be mentioned that the Ministry of the Interior publishes a fortnightly newsletter on all aspects of Danish policy and administration relating to aliens. The Danish Red Cross also publishes an informative newspaper mainly concerning asylum-seekers to facilitate the acceptance of new asylum centres and their inhabitants by local communities. The Danish Refugee Council publishes a lot of material to further understanding of the plight of refugees worldwide and in Denmark. Furthermore, the Danish Centre for Human Rights and a number of NGOs sponsored by public funds make a significant effort to inform the public on racial discrimination, issues of tolerance and international human rights conventions. The new Board for Ethnic Equality is also expected to engage in public information efforts. It should also be mentioned that the Danish Government has appropriated DKr 12 million for activities in Denmark within the framework of the European Youth Campaign against Racism, Xenophobia, Anti-Semitism and Intolerance initiated by the Council of Europe Summit in October 1993. Finally, many other public and private information initiatives promoting tolerance have been taken in various media, at meetings and by other means.